

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

Plaintiff,

Case No. 14-cv-7380

v.

MARK R. SCHWARTZ,
RACHEL SCHWARTZ,
OCWEN LOAN SERVICING, LLC, &
THE NEW YORK STATE DEPARTMENT
OF TAXATION AND FINANCE,

Hon.

Defendants.

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COMPLAINT

The United States of America, pursuant to 26 U.S.C. §§ 7401 and 7403, at the direction of the Attorney General of the United States and with the authorization of a delegate of the Secretary of the Treasury, brings this civil action to: (a) establish the validity of the liens of the United States under 26 U.S.C. § 6321 upon all of the property and rights to property of Defendant-taxpayers Mark R. Schwartz and Rachel Schwartz; (b) enforce federal tax liens upon the real property located at 1311 East 10th Street, Brooklyn, NY 11230, title of which is held in the name of Defendant-taxpayer Rachel Schwartz, with such real property to be sold at a judicial sale; (c) determine the respective interests of the defendants in the real property, and the relative priority and amount or percentage of distribution that each Defendant and the United States shall receive from the proceeds of a court-ordered sale of the real property.

For its Complaint, the United States alleges as follows:

1. Jurisdiction is conferred upon the district court pursuant to 26 U.S.C. §§ 7402 and 7403 and 28 U.S.C. §§ 1331, 1340 and 1345.

2. The Defendant-taxpayers Mark R. Schwartz and Rachel Schwartz, reside in Brooklyn, New York, within the jurisdiction of this Court.

3. Ocwen Loan Servicing, LLC is named as a defendant to this action as required by 26 U.S.C. § 7403(b), for the reason that it has, or may claim an interest in the property upon which the United States seeks to enforce its liens.

4. The New York State Department of Taxation and Finance is named as a defendant to this action as required by 26 U.S.C. § 7403(b), for the reason that it has, or may claim an interest in the property upon which the United States seeks to enforce its liens.

5. The property upon which the United States seeks to enforce federal tax liens consists of real property located at 1311 East 10th Street, Brooklyn, NY 11230, in Kings County, New York (hereinafter “the Property”), more fully described as:

ALL that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Borough of Brooklyn, County of Kings, City and State of New York, bounded and described as follows:
BEGINNING at a point on the easterly side of East 10th Street, distant 80 feet southerly from the corner formed by the intersection of the easterly side of East 10th Street with the southerly side of Avenue M;
RUNNING THENCE easterly parallel with Avenue M, 100 feet;
THENCE southerly parallel with East 10th Street, 20 feet;
THENCE westerly again parallel with Avenue M, 100 feet to the easterly side of East 10th Street;
THENCE northerly along the said easterly side of East 10th Street, 20 feet to the point or place of BEGINNING.
SAID PREMISES being known as and by the street number 1311 East 10th Street, Brooklyn, New York.

Premises are the same as those described in Liber 8722 Page 488, to the grantors herein.

6. By deed dated March 3, 1999, Defendant-taxpayer Rachel Schwartz acquired title to the Property. A copy of the deed is attached as Exhibit A.

7. A delegate of the Secretary of the Treasury made assessments against Defendant-taxpayers Mark R. Schwartz and Rachel Schwartz for federal income taxes, estimated tax penalties, and interest as follows:

Year	Assessment Date	Unpaid Assessed Amount	Unpaid Balance with Accrued Penalties & Interest to 12/17/2014	Notice of Federal Tax Lien Filed in Kings County, NY (Refile date)
2001	11/25/2002	\$74,185.62	\$130,209.68	11/10/2003; 8/14/2012
2002	11/24/2003	\$74,361.80	\$124,558.03	3/2/2004; 3/15/2013
2003	11/22/2004	\$93,124.37	\$148,893.58	3/16/2005
2004	12/12/2005	\$25,273.48	\$37,877.33	8/7/2006
2005	7/9/2007	\$26,415.40	\$35,395.49	4/18/2008
2006	7/9/2007	\$13,252.55	\$17,035.22	4/18/2008
2007	1/4/2010	\$25,688.75	\$30,064.23	11/23/2010
2008	1/4/2010	\$18,688.35	\$21,778.46	11/23/2010
2009	9/27/2010	\$14,488.67	\$17,530.82	11/23/2010
2010	2/6/2012	\$12,935.79	\$16,114.86	3/19/2012
2011	5/28/2012	\$8,954.70	\$11,755.43	7/17/2012
		<u>TOTAL</u>	<u>\$591,213.13</u>	

8. Notice of the assessments listed in paragraph 7 and demand for their payment was duly made upon Defendant-taxpayers Mark R. Schwartz and Rachel Schwartz on or about the dates of assessment.

9. The Internal Revenue Service filed Notices of Federal Tax Lien for all of tax assessments listed in paragraph 7 against Defendant-taxpayers Mark R. Schwartz and Rachel Schwartz.

10. Pursuant to 26 U.S.C. § 6321, the tax liens attach to all property and rights to property of Defendant-taxpayers Mark R. Schwartz and Rachel Schwartz, including personal as well as real property.

11. Pursuant to 26 U.S.C. § 6323, the tax liens have priority over all other claims or interests except those described in § 6323(a).

12. On November 16, 2012, the United States filed a suit in this Court to reduce to judgment the federal tax assessments listed in paragraph 7. *See United States of America v. Mark R. Schwartz and Rachel Schwartz*, E.D.N.Y., Case No. 1:12-cv-05685-NGG.

13. On October 10, 2013, the Clerk of the Court entered judgment against Defendant-taxpayers Mark R. Schwartz and Rachel Schwartz, jointly and severally, in the amount of \$562,894.70 (as of May 31, 2013 with accruals and interest from that date) for unpaid income taxes listed in paragraph 7.

14. On July 30, 2014, the Plaintiff United States filed abstracts of judgment pursuant to 28 U.S.C. § 3201 with respect to the judgment referenced in paragraph 13 with the Kings County Register's Office.

WHEREFORE, the Plaintiff United States requests that this Court:

- (A) Determine and adjudge that the Plaintiff United States of America has valid and subsisting federal tax liens and a judgment lien on all property and rights to property belonging to Defendant-taxpayers Mark R. Schwartz and Rachel Schwartz;
- (B) Determine and adjudge that the Plaintiff United States of America has valid and subsisting federal tax liens on the property located at 1311 East 10th Street, Brooklyn, NY 11230;
- (C) Order that the federal tax liens be enforced against the property located at 1311 East 10th Street, Brooklyn, NY 11230, to collect the tax liabilities of the Defendant-taxpayers Mark R. Schwartz and Rachel Schwartz, as set forth in paragraph 7 through judicial sale, according to law, free and clear all rights, titles claims, and liens other parties to the lawsuit, with the net proceeds of the sales, after the payment of the direct costs of sale, and any real estate taxes due and owing, to be allocated among the interests of the parties in accordance with their lawful priorities; and
- (D) Award the Plaintiff United States of America its costs and such further relief as the Court deems just and proper.

Respectfully submitted,

For the Defendant United States of America,
TAMARA W. ASHFORD
Acting Assistant Attorney General

/s/ Patrick B. Gushue
PATRICK B. GUSHUE
Trial Attorney, Tax Division
U.S. Department of Justice
P.O. Box 55
Washington, D.C. 20044
Tel: 202-307-6010
Fax: 202-514-5238
E-mail: Patrick.B.Gushue@tax.usdoj.gov